IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1446 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PALIBEN BHAVANBHAI PATEL & 1 - Appellant(s)
Versus
KANCHANBEN WD/O PRADIPBHAI DALSANGBHAI & 5 - Defendant(s)

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Appearance :

MR BA SURTI for Appellant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 1 - 5.
MS HINA DESAI for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

1. Shri B.A. Surti, learned counsel for the appellants; Ms. Hina Desai, learned counsel for the respondent no.5; none for others though served.

2. The appellants-owner and driver of the tractor No. GAQ 9165 and the Trailer attached to it bearing registration No. GTT 8492, being aggrieved by the award dated 22.9.88 passed by the Motor Accident Claims Tribunal [Main] Surat in Motor Accident Claims Petition No. 369 of 1984, are before this Court with a submission that the Tribunal was unjustified in exonerating the respondent no.6.

3. The short facts necessary for disposal of the present appeal are that the deceased was sitting in the Trailer attached to the tractor owned by the appellant no.1. The trailer met with an accident which resulted into death of one Pradipbhai, husband of the claimant no.1, father of claimants no. 2 and 3 and son of claimants no. 4 and 5. It was contended before the Tribunal that the driver of the tractor was rash and negligent; he did not take due care and caution and his driving led to the accident and ultimate death of the deceased. The learned Tribunal issued notices to the present appellants, who appeared before the Tribunal as party-defendants and

submitted that the driver was neither rash nor negligent and the accident was inevitable. The Insurance Company also appeared and submitted that they were not answerable to the claim made by the claimants in view of the facts that a passenger was carried in the trailer, specially when no permit for carrying passengers was obtained and the Insurance Company had not covered the risk of the passengers carried in the trailer.

4. The learned Tribunal held that the claimants would be entitled to a sum of Rs. 1,40,000/- towards compensation; it however, held the Insurance Company would be liable to the extent of Rs. 15,000/- only observing that under the head of “No Fault Liability”, the Insurance Company would have to pay a sum of Rs. 15,000/-. For rest of the amount, owner and the driver have been held liable.

5. Shri B.A. Surti, learned counsel for the appellant submitted that the Tribunal was unjustified in exonerating the Insurance Company despite the fact

that the deceased was carried as agricultural labour in the trailer. He also submitted that as the tractor and the trailer were insured with the Insurance Company, the Insurance Company could not avoid its liability. Ms. Hina Desai, learned counsel for the respondent no.6 – Insurance Company, however, submitted for for carrying passengers in a goods vehicle, owner of the vehicle is required to obtain permit and after obtaining such permit, he has to pay additional premium to cover the risk of such passengers. According to her, in the present case, owner of the tractor and the trailer has failed in proving that she ever obtained such permit from the competent Regional Transport Officer or paid any extra premium for coverage of the risk of passengers or labourers carried in the trailer.

6. After going through the evidence available on the records and the findings recorded by the Tribunal, I am unable to hold that the appellants have brought any evidence on the records to show or prove that they had ever obtained any permit from the competent Regional Transport Officer to carry

passengers in the trailer which was meant for carrying agricultural produce or was required to be used for agricultural operations. They have also failed in proving that they had paid any extra premium for coverage of the risk of the labours/employees or the passengers. If the appellants have failed in proving that they had paid extra premium for coverage of the extra risk or had obtained legal permit from the Regional Transport Officer to carry passengers etc., then, Insurance Company would be justified in submitting that they are not liable.

7. In the opinion of this Court, the Tribunal was not unjustified in exonerating the Insurance Company.

8. The appeal deserves to and is accordingly dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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